IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition No. 889 (S/S) of 2007

Tanuja Pathak W/o Sri Bhuvan Chandra Pathak
R/o Dami Sadan near Gangnath Mandir,
New Sera, Pithoragarh ------- Petitioner

Versus

1. State of Uttarakhand through Director of Education, Uttarakhand Dehradun
2. District Education Officer, District Pithoragarh
3. Additional District Education Officer (Basic), District Pithoragarh

------- Respondents

Hon'ble M.M. Ghildiyal, J.

Heard Sri Lalit Samant, learned counsel for the petitioner and Sri Paresh Tripathi, learned Brief Holder for State of Uttarakhand for the respondents.

By means of this writ petition, the petitioner has challenged the transfer order dated 12.06.2007 passed by respondent no. 2 District Education Officer, Pithoragarh, by which the petitioner has been transferred from Primary School, Hureti (Bin Block) to Primary School Tusrera (Berinag Block), Pithoragarh on the ground that she is working against the standard strength of teachers in the school.

The petitioner has attacked the transfer order on various grounds. First ground of attack is that the husband of the petitioner is also working as Assistant Teacher in District Pithoragarh, and the petitioner has been transferred 85 km. away from her present place of posting, while there is guideline issued by the State Government that husband and wife, if in service of

Uttarakhand Government as far as possible, they may be posted at one place or nearby. Learned counsel for the petitioner has prayed that the petitioner could have been transferred in a nearby place where the post is vacant instead of sending her to a very remote place, which is 85 km. away from the present place of posting.

I do not find any force in the submission made by the learned counsel for the petitioner as the guideline provides to place the husband and wife at one place as far as it is possible, but the department is not bound to place husband and wife at one place in each and every case.

Learned counsel for the petitioner has further attacked the transfer order on the ground that one Smt. Basanti Kargeti is continuously working in the School since 1999, whereas the petitioner has joined this school only in 2001 by transfer and there is Proposed Transfer Policy, wherein it is stated that the persons, who have long stay in the institution, should be transferred first, instead of those persons who have the shortest stay in the institution.

This Court, in absence of pleadings, cannot decide on merit whether the stay of Smt. Basanti Kargeti is justified or not. There may be so many reasons, which can justify the stay of Smt. Basanti Kargeti in the school. Moreover, as the learned counsel for the petitioner has himself admitted that the Transfer Policy, on which he is relying, is proposed and is not final, the Transfer Policy, which is a Guideline, does not have the statutory force. Thus, this ground of the petitioner has also no force.

Learned counsel for the petitioner has submitted that in this regard, the petitioner, raising all her grievances, has already moved a representation on 02.07.2007, Annexure 6 to the writ petition, before respondent no. 2, District Education Officer, Pithoragarh, which is still pending before him.

In the circumstances, I deem it fit and proper to direct the respondent no. 2 to take decision on the representation of the petitioner within a period of 10 days from the date of production of a certified copy of this order before him.

It is expected from the respondent no. 2 to follow up the guidelines framed by the Government in respect of transfer and shall try to adjust the petitioner, if it is not possible in the institution where the husband of the petitioner is working, at any nearby place where the post is vacant.

With this direction, the writ petition is finally disposed of. All the pending applications stand disposed of.

(M.M. Ghildiyal, J.)

13.07.2007
VKS